IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

RCRev..No. 166 of 2004()

RCA.14/2000 of RENT CONTROL APPELLATE AUTHORITY, THRISSUR
RCP.47/1998 of RENT CONTROL COURT,CHAVAKKAD
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PETITIONER/RESPONDENT/PETITIONER.

JACOB, S/O.CHOWALLUR KOCHAPPU,
THAIKKAD AMSOM, CHAVAKKAD TALUK
THRISSUR DISTRICT.

BY ADV. SRI.K.RAMACHANDRAN

RESPONDENT: APPELLANT/RESPONDENT.

THOMAS, S/O.MUTTATH JOSEPH,
MAMMIYUR, GURUVAYOOR, CHAVAKKAD TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.V.GIRI
SRI.G.SREEKUMAR (CHELUR)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.Abdul Gafoor & Antony Dominic, JJ.
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R.C.R.No.166 of 2004
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Dated this the 15th day of February, 2007.

ORDER

Abdul Gafoor,J.

This revision petition is by the landlord, who urged the ground available under Sections 11(3) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as 'the Act') to evict the tenant. The Rent Controller allowed eviction only under latter count and rejected on the former part. In appeal by the tenant and cross-objection by the landlord the eviction ordered under Section 11 (4)(iii) of the Act was reversed and the order on the other ground was sustained. Therefore, this revision petition by the landlord.

2. It is contended that the bonafides urged by the landlord has been concurrently found by the Authorities below. But the tenant was given the benefit in terms of the first Proviso to Section 11(3) of the Act as it was found that a building owned by the landlord with Number 173 was in his possession at the material point of time. It is submitted that this finding entered by the Rent Controller and confirmed by the Rent Control Appellate Authority is solely on the basis of Ext.X1 series, the extract of Assessment Register kept by the Local

Authority in respect of building No.173 referred to above. The substantial objection that the tenant had taken to resist the eviction under Section 11(3) of the Act was that the landlord was having four shop rooms in his ownership and possession. But during evidence, it has come out that three rooms out of the said four rooms on the first floor of the building had been in the occupation of tenants. As regards the other room bearing No.173, the landlord introduced in evidence Exts. A2 and A6 series. Ext.A2 is the tenancy agreement executed in favour of the predecessor in interest of the landlord by one Haridasan, the tenant in room No.173. Ext.A6 series contained counterfoils of the receipts issued by the landlord on payment of rent by the said Haridasan. Therefore, according to the landlord, he did not adduce any evidence as these were sufficient proof to show that building No.173 was in occupation of a tenant. It was only after the closure of his evidence and during the examination of the tenant that Ext.X1 series had been introduced in evidence. Ext.X1 series revealed that all the three rooms out of the four rooms on the first floor were occupied by the tenants. But room No.173 mentioned in Ext.X1 series was shown as vacant. Thereafter, the landlord was not given an opportunity to explain that document and to rebut the presumption that may arise out of Ext.X1 series, it is contended. Therefore, it is

submitted that the finding that the tenant is entitled to the benefit of the first proviso to Section 11(3) of the Act depending only on the presumption available in terms of Ext.X1 official documents is unsustainable.

3. Coming to the ground available under Section 11(4)(iii) of the Act, it is submitted that the Commission report Ext.C1 categorically revealed that the tenanted premises had an area of 6x4 meters whereas the other shop room admittedly in the possession of a tenant where the tenant is conducting the same type of business was having a verandha of 6.8 x 2.5 meters, a room of 5.9 x 6.8 meters, a corridor of 4.9 x 1.85 meters and yet another room of 8.9 x 6.45 meters with shutters to the other side also. The businesses in both the premises are in textiles. The requirement of the tenant meted out of the tenanted premises can be met reasonably and sufficiently by these rooms of higher dimensions, it is submitted. In the light of this categoric report by the Commissioner, which is in no way objected, the Appellate Authority ought not to have reversed the finding arrived at by the Rent Controller under Section 11(4)(iii) of the Act, it is further submitted. So the reasoning adopted by the Rent Controller is more justified, the counsel contends.

4. It is contended by the tenant that Ext.X1 series will have

more veracity, being the documents produced from the official custody. Steps were taken by the tenant well before the commencement of the trial to produce the said documents. Then the landlord should have been sufficiently vigilant to examine it at appropriate time. Merely because it has been introduced in evidence after his examination is not sufficient to contend that he did not get an opportunity to rebut it. So far as the tenant is concerned, to claim the benefit available under 1st proviso to Section 11(3) of the Act, he need prima facie show that the landlord is having in his possession and ownership another room. That has been satisfied by the production of the official documents. In such circumstances, the authorities below had entered into correct finding based on Ext.X1 series. It cannot be stated to be illegal and improper to invite interference in a revision under Section 20 of the Act.

5. As regards the finding under Section 11(4)(iii) of the Act, it is contended by the tenant that the reasonable sufficiency of the building in the possession of the tenant is to be considered with reference to the evidence available at the time of starting the business 'Ragamalika' in the building in the possession of the tenant. It is submitted that if the requirement of the tenant at the time of such starting of the business is taken, the entire business now available in

the tenanted premises cannot be shifted and transplanted in the premises of 'Ragamalika', the other premises in the possession of the tenant. Therefore, the Appellate Authority was justified in reversing the finding of the Rent Controller.

6. As regards the finding under Section 11(3) of the Act, the landlord had produced Ext.A2 rent deed and Ext.A6 series, counterfoils of the rent receipts. Ext.A2 reveals that the building with number 173 had been rented out to one Haridasan. Ext.A6 series is also sufficient to reveal that the said Haridasan was paying rent to the landlord. These documents had been produced and introduced in evidence at the time of examination of the landlord as PW1. It seems from the proceedings that after the closure of the evidence by the landlord, Ext.X1 series produced by the Municipal Authorities had been introduced in evidence. The landlord had closed his evidence. Ext.X1 had been introduced in evidence on 28.9.1999 on which date the tenant was examined. But deposition of the tenant does not reveal that Ext.X1 was marked in evidence through him. Ext.X1 series is at the same time is seen marked. In such circumstances, it is possible for the landlord to contend that he had discharged his burden by producing Exts.A2 and A6 series to show that the rooms alleged to be in his ownership and possession was really in the possession of the

tenant. The Municipal documents Ext.X1 series introduced in evidence later revealed that the said room was vacant. Necessarily, the landlord ought to have been given an opportunity to rebut the presumption that may arise out of the Municipal documents. That opportunity had not been really meted out to the landlord in this case. Therefore, the finding of the authorities below giving the benefit of the first proviso to Section 11(3) of the Act to the tenant to deny eviction merely based on Ext.X1 is not justified. A further probe is required giving an opportunity to the landlord to prove his case, if necessary introducing further evidence. The finding on that point by the authorities below has to be set aside and ordinarily a remand is required in this regard.

7. Now we will deal with the ground available under Section 11 (4)(iii) of the Act. This ground was found in favour of the landlord by the Rent Controller, but reversed by the Rent Control Appellate Authority. In this regard it is profitable to quote Section 11(4)(iii) of the Act.

> "if the tenant already has in his possession a building or subsequently acquires possession of or puts up a building, reasonably sufficient for his requirements in the same city, town or village;"

It is an admitted position that the tenant is in possession of yet another premises than the one rented out to him by the landlord. According to the landlord, the tenancy commenced on 16.5.1994 as evidenced by Ext.A1 series. According to the tenant a firm was in occupation of the room from 1972 onwards. It was dissolved by Ext.B9, which has not been accepted by the Authorities below. According to him, after such dissolution, he continued individual tenancy. Whatever be the case with regard to the commencement of the tenancy by the parties, the tenant was in possession of another premises 'Ragamalika' where a business is conducted since 1980. Therefore, the tenant had already been in possession of a building to come within the first limb of the first proviso to Section 11(4)(iii) of the Act. In such circumstances what remains is to examine whether it is "reasonably sufficient for his requirement". The requirement, that the tenant has in the tenanted premises, is to conduct a textile business, which is presently named as Sanghom. The business conducted in 'Ragamalika' premises is also textile business. Both the premises are in the same Municipality, namely, Guruvayoor Municipality. When the business is of the same nature there arises no question of examining sufficiency for the requirement, because the business in the tenanted premises and the business in the other premises with the tenant are

one and the same. The contention that sufficiency of the requirement shall be with reference to the additional space that is required to transplant the business in the tenanted premises to the premises 'Ragamalika' over and above the space there cannot be countenanced. The tenant is already having possession of a building where same business is conducted. The landlord can then get him evicted. In such circumstances, constrain of the landlord is only to prove that the building in the possession of the tenant is reasonably sufficient to accommodate the business in the tenanted premises. When the business is one and the same or of the same nature, viz., in textile, the business in the tenanted premises can be sufficiently be conducted in the other premises with more area, which the tenant is already in possession. As rightly found by the Rent Controller, the landlord had very reasonably proved the ground under Section 11(4)(iii) of the Act. Therefore, the finding by the Appellate Authority in that regard is set aside and that of the Rent Controller is restored. Consequently, the landlord is entitled to evict the respondent/tenant on the ground available under Section 11(4)(iii) of the Act.

8. As the landlord is entitled to get eviction under Section 11(4)(iii) of the Act, there is no reason to remand the matter to consider whether the tenant is entitled to the benefit of the

first Proviso to Section 11(3) of the Act.

9. Revision Petition is accordingly allowed.

10. Taking into account the business of the tenant and the placement of the parties, we are of the view that the tenant shall be given six months time to give vacant possession of the building to the landlord on his undertaking in the form of an affidavit to be filed in the Execution Court that he will give vacant possession of the building on or before 15.8.2007 and pay the entire arrears of rent, if any. The undertaking shall be filed within one month from today.

K.A.Abdul Gafoor,
Judge.

Antony Dominic,
Judge.

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